STATE OF CALIFORNIA PETE WILSON, *Governor*

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

October 1, 1998

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VIA UNITED PARCEL SERVICE

Magalie Roman Salas, Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

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Re: **Docket No. 96-45**

Dear Ms. Salas:

Enclosed please find an original and six copies of "Opposition by California To Pacific's Petition For Waiver Of Federal Sequencing Requirements For Applying Discounts To Schools And Libraries" in the above-referenced docket.

Also enclosed is one additional copy of this document. Kindly file-stamp this copy and return it to me in the enclosed self-addressed envelope.

Thank you for your attention to this matter. If you have any questions, I can be reached at (415) 703-2047.

Sincerely,

Ellen S. LeVine

Ellen S. LeVine
Attorney for the People of the
State of California and the Public
Utilities Commission of the
State of California

ESL:afm

Enclosure

No. of Copies rec'd 0+6
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ORIGINAL

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of Federal-State Joint Board on Universal Service Pacific Bell's Petition for Expedited Waiver of the Stacking Order on Discounts to Schools and Libraries.	))))))))	CC. Docket No. 96-45

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OPPOSITION BY CALIFORNIA TO PACIFIC'S PETITION FOR WAIVER OF FEDERAL SEQUENCING REQUIREMENTS FOR APPLYING DISCOUNTS TO SCHOOLS AND LIBRARIES

The People of the State of California and the Public Utilities Commission of the State of California ("CPUC") hereby oppose the Petition for Expedited Waiver ("Petition") filed by Pacific Bell ("Pacific") in the above-referenced docket. In its petition, Pacific seeks a waiver of federal sequencing requirements for applying federal and state discounts to services offered by eligible schools and libraries under the Telecommunications Act of 1996. Under current procedures, the Federal Communications Commission ("FCC") applies the federal discount first, and the state discount second.[1] Pacific asks the FCC to reverse this sequence so

[1] Fourth Order on Reconsideration in CC Docket No. 96-45, Report and Order, Federal-State Joint Board on Universal Service, 13 FCC Rcd 5318 (1997) ("Fourth Recon Order").

that the state discount is applied first, and the federal discount is applied second. Pacific requests such relief on both a retroactive and prospective basis.

As discussed below, none of the arguments advanced by Pacific in support of its petition has any merit. The petition should therefore be denied.

ARGUMENT

In support of its petition, Pacific asserts that the CPUC's California Teleconnect Fund ("CTF") requires eligible schools and libraries to choose between the federal and state discount programs – i.e., the CTF program "does not permit stacking with a federal discount that is applied first." Pet at 3. Thus, according to Pacific, "eligible schools and libraries will not be able to benefit from both programs" as envisioned by the FCC in its Fourth Recon Order. Pet. at 4.

Pacific's assertions are fundamentally in error. In fact, contrary to Pacific's claim, the CPUC's CTS program expressly permits eligible schools and libraries to receive <u>both</u> the state and federal discounts in the sequence prescribed by the FCC. By Resolution No. T-16118, issued nearly eight months ago on February 4, 1998, the CPUC clearly ordered that

> "1. Eligible schools and libraries may receive 50 percent discount for telecommunications services covered under the California Teleconnect Fund on the remaining rates after taking into account the discounts received from the federal E-Rate program."[2]

[2] A copy of the CPUC's Resolution No. T-16118, issued February 4, 1998, is appended to this opposition.

The plain language of this order thus directly refutes Pacific's claim that eligible schools and libraries in California are forced to choose between state and federal discounts. Pet. at 2, 5. Not only does the CPUC's resolution expressly allow eligible schools and libraries to receive <u>both</u> federal and state discounts, but it also fully complies with the sequence mandated by the FCC in its Fourth Recon Order in applying these discounts – i.e., the federal discount is applied first, and then the state discount is applied. <u>Id</u>.at ¶ 196. Thus, the fundamental assumption underlying Pacific's petition and argument is simply wrong.

Pacific next asserts that the waiver is justified because "more federal funds [may] be available to other eligible schools and libraries" and federal funding requirements for California will be reduced. Pet. at 6. Pacific, however, fails to point out that this is true only because, under Pacific's sequencing proposal, California will receive <u>less</u> federal funding than other states. At the same time, reduced federal funding under Pacific's proposal would translate directly into increased state funding of discounts by California's ratepayers. For example, suppose the CPUC's CTF discount is 50 percent, the federal E-Rate is 60 percent, and the rate for the service eligible for discount is $100. Under current FCC sequencing rules, the federal discount of 60 percent would first be applied to the $100, requiring federal funding of $60. The state discount of 50 percent would then apply to the remaining $40, requiring state funding of $20. In contrast, under Pacific's proposal, state funding requirements would increase, and federal funding requirements would decrease. The state discount of 50 percent would first apply to the \$100, requiring state funding of \$50. The federal discount of 60 percent would then apply to \$50, requiring federal funding of only \$30. Pacific's proposal thus would shift a substantially larger share of total funding requirements to California and its ratepayers, a result that unfairly treats California differently from other states, and which is at odds with the FCC's Fourth Recon Order. In fact, in prescribing that the federal discount should apply before any-state provided discount, the FCC stated that "to find otherwise would penalize states that have implemented support programs for schools and libraries by reducing the level of federal support that those schools and libraries would receive." Fourth Recon Order at ¶ 196.

Third, Pacific claims that a waiver is justified to avoid "innumerable administrative burdens, complications, and errors for schools and libraries, and Pacific due to the interplay between the programs." Pet. at 4. In support of the claim that schools and libraries will be unduly burdened, Pacific rests again on its false assertion that such entities in California cannot qualify for both federal and state discounts, and hence will "get a lesser benefit than the FCC intended with the federal program and the Fourth Recon Order" Pet. at 4. As discussed, the CPUC has made clear that California schools and libraries are eligible for <u>both</u> federal and state discounts. [3] Thus, these entities will receive the same level of discount (federal and state combined) irrespective of the sequential order of the discounts. In short, no burden at all is imposed on these entities. To the contrary, it is Pacific's proposal that imposes a burden on California by shifting substantial and additional costs to California's ratepayers, as discussed above.

Nor is it clear that any undue administrative burden will be assumed by Pacific if the waiver is denied. The "intensive manual effort" of which Pacific complains occurs only if Pacific's assumption that schools and libraries which choose the state discount are not eligible for the federal discount. Pet. at 5. Specifically, Pacific contends that for those entities currently receiving the state discount which instead choose the federal discount, Pacific will have to "individually and manually remove" from its account records the Pacific-generated indicator placed on these entities' records. Pet. at 5. However, inasmuch as these entities are in fact eligible for both federal and state discounts, Pacific would not need to perform that task.

Pacific's further complaint that it will be costly to reprogram its computers to apply the federal discount first, then the state discount, is also without merit. Aside from trotting out unsupported cost estimates, Pacific fails to point out that it was on notice as early as 1997, when the FCC issued its Fourth Recon Order, that

[3] Thus, Pacific's argument that "qualified schools and libraries will need to choose which program [state or federal] will apply to which eligible services and products, on a service-by-service basis" is a red herring. In fact, none of this is true.

Pacific would need to coordinate the implementation of federal discount programs with state discount programs. In its February 4, 1998 resolution, the CPUC expected "[c]arriers ... to begin the process of developing mechanized systems for handling the combined programs, upon issuance of this resolution." Pacific thus could have, and should have, programmed its computers in a manner that would have given Pacific the flexibility to implement both state and federal programs in accordance with the FCC's orders without substantial cost. [4]

Pacific also fails to indicate that there are numerous other alternatives for implementing both the federal and state programs that might well result in considerably lower costs. For example, in workshops conducted by the CPUC to implement state and federal discounting programs, CPUC staff suggested that Pacific and other carriers could coordinate the reconciliation of the two discounts with little additional effort when it reimburses schools and libraries as part of its responsibility under the federal program. Since California carriers, such as Pacific, will have to go through all bills rendered for schools and libraries eligible for the federal program, they can recalculate claims to the CTF at the same time that they calculate the amount that they must reimburse schools and libraries.

Finally, Pacific offers no basis whatsoever for seeking expedited treatment of its petition. As discussed, Pacific has known since last February, the date of

[4] In any event, to the extent that Pacific incurs any transitional costs in implementing the new discount programs, these costs would be substantially less than the additional costs that Pacific's proposal to shift to California ratepayers.

CPUC Resolution No. T-16118, that it would need to implement the federal and state discount programs for eligible schools and libraries in the sequence set forth by the FCC in its Fourth Recon Order of 1997 and the CPUC's resolution. Had urgency been at issue, Pacific could have, and should have, filed its petition nearly eight months ago, seeking the requested waiver. Moreover, Pacific points to no imminent event or milestone that justifies expedited treatment.

In the end, there are simply no grounds for granting Pacific's petition. Schools and libraries in California are eligible for both federal and state discounts. These discounts will be applied in the sequence set forth in the FCC's Fourth Recon Order – i.e., federal discount first, and state discount thereafter –which assures that California equitably receives the same amount of federal funding as other states. At the same time, California's program imposes no additional cost or burden on eligible schools and libraries. To the extent that Pacific's compliance with FCC orders imposes additional expense on Pacific – which is speculative – Pacific could have anticipated and mitigated any expense by programming its computers to accommodate both state and federal discount programs.

For all of these reasons, Pacific's petition should be denied.

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Respectfully submitted,

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October 1, 1998

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Telecommunications Division
Public Programs Branch

RESOLUTION T-16118
February 4, 1998

R E S O L U T I O N

RESOLUTION T-16118. ALL TELECOMMUNICATIONS UTILITIES.TO REALIGN THE DISCOUNTS FOR INTRASTATE SERVICES PROVIDED TO SCHOOLS AND LIBRARIES UNDER THE CALIFORNIA TELECONNECT FUND WITH THE FEDERAL COMMUNICATIONS COMMISSION'S DISCOUNT PROGRAM PURSUANT TO ITS REPORT AND ORDER (FCC 97-157) IN THE MATTER OF FEDERAL-STATE JOINT BOARD ON UNIVERSAL SERVICE (CC DOCKET NO. 96-45).

SUMMARY

This Resolution adopts modifications to the discount program for schools and libraries under the California Teleconnect Fund (CTF) in order to realign the CTF with the Federal Communications Commission's (FCC) discount program for schools and libraries (also referred to as E-Rate program). Schools and libraries should be able to obtain cumulative discounts from both the CTF and the E-Rate program for the telecommunications services currently covered under the CTF. Specifically, schools and libraries should be eligible for a 50 percent rate discount from the CTF for a particular telecommunications service after taking into account the discount obtained from the E-Rate program.

BACKGROUND

In its Universal Service decision (D.) 96-10-066, the Commission established the California Teleconnect Fund (CTF), which provides California schools and libraries with a 50 percent discount on selected telecommunications services.[1] The CTF also provides discounts for selected services to certain types of community based organizations (CBOs) and municipally owned health care institutions. The Commission anticipated that the state universal service programs may have to be reconciled with the universal service programs and rules that the FCC may adopt, and directed the Telecommunications Division staff to recommend to

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[1] These services include measured business service, switched 56, Integrated Services Digital Network (ISDN), T-1, and DS-3, or their functional equivalents. (D.96-10-066, Appendix B, Rule 8.B.)

the Commission what issues need to be resolved.[2]

On May 7, 1997, subsequent to the issuance of D.96-10-066, the FCC created a new discount program for schools and libraries for both interstate and intrastate telecommunications services (also referred to as "E-Rate program"), as part of its universal service Report and Order (FCC 97-157). The E-Rate program discounts apply to a broader set of services and facilities than the CTF - i.e., all commercially available telecommunications services which schools and libraries believe will meet their needs, including the telecommunications and information services needed to use the Internet, and internal connections.

The FCC discounts vary depending on the level of economic disadvantage of the school or library and whether the school or library is located in an urban or rural area. The schools and libraries discount matrix that the FCC adopted provides discounts ranging from 20 percent to 90 percent. These discount percentages are to be applied to a pre-discount price, which should be no higher than the lowest corresponding price the carriers charge to similarly situated non-residential customers for similar services. Schools and libraries seeking E-Rate program discounts are required to submit a technology plan and to participate in a competitive bidding process. Furthermore, states must approve discounts for intrastate services at least as great as those established by the FCC for interstate services as a condition for schools and libraries to obtain the federal support.[3]

In Resolution T-16052, the Commission approved the schools and libraries discount matrix contained in the FCC Report and Order to enable California schools and libraries to request federally funded discounts for intrastate telecommunications services under the E-Rate program. Resolution T-16052 was not intended to modify the CTF nor extend the CTF discounts over services the Commission does not currently regulate. The CTF discounts will still be available even with the presence of the E-Rate program, although schools and libraries are encouraged to determine which discount program offers them the best solution for their telecommunications needs at the best price. The Commission noted that the CTF-discounted rate does not appear to satisfy the FCC's criteria for a pre-discount price, thereby precluding the application of the federal discounts after the CTF discounts. The Commission indicated that it will have an opportunity, under the Universal Service proceeding, to modify the CTF and ensure that it complements the federal program.

On November 7, 1997, the Assigned Commissioner in the Universal Service proceeding issued a ruling (ACR) soliciting comments on

[2] D.96-10-066, mimeo., page 92 and Ordering Paragraph (O.P.) 17. (O.P. 18 as modified by D. 97-01-020.)

[3] FCC 97-157, ¶550.

his proposal to allow schools and libraries to seek cumulative discounts for a given service from both the E-Rate and the CTF programs for those services currently covered under the CTF.[4] This approach would enable schools and libraries to obtain an additional 50 percent discount from the CTF for the cost to them for telecommunications services after taking into account the E-Rate program discounts. To illustrate, a school eligible for a 40 percent E-Rate discount for a given service may apply for an additional 50 percent reduction in the remaining price of the service under the CTF for a total state and federal discount of 70 percent from the pre-discount price. The ACR invited interested parties to submit opening and reply comments to be served on the service list of R.95/01-020/I.95-01-021 and the Telecommunications Division Director.[5] In compliance with P.U. Code § 1708, the ACR also invited any party who believes that hearings are legally required on any of the issues raised in the ACR to submit such a request as part of their opening comments. Assuming no hearings are necessary, the ACR indicated that the Commission may issue a resolution regarding the issues addressed in the ruling based on the comments received.

On December 30, 1997, the FCC issued its Fourth Order on Reconsideration (FCC 97-420, "4th Order") in its universal service proceeding. One of the issues the 4th Order addressed was the interaction of state and federal discount plans. According to the FCC:

> for services provided to eligible schools and libraries, federal universal service discounts should be based on the price of the service to regular commercial customers, or if lower than the price of the service to regular commercial customers, the competitively bid price offered by the service provider to the school or library that is purchasing eligible services, <u>prior to the application of any state-provided support for schools and libraries</u>. To find otherwise would penalize states that have implemented support programs for schools and libraries by reducing the level of federal support that those schools and libraries would receive. (FCC 97-420, paragraph 196, emphasis added.)

The 4th Order reaffirms a conclusion in Resolution T-16052 that in cases where both state and federal discounts apply, the federal discounts should be applied first, then the state discounts.

PARTIES' COMMENTS

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[4] In addition to the CTF/E-Rate realignment issue, the ACR also invited comments on proposed changes in carriers' reimbursements from the Universal Lifeline Telephone Service (ULTS) Fund in light of the changes in federal Lifeline program.

[5] Opening and reply comments were originally due on November 17 and 24, 1997, respectively. Upon request by certain parties, ALJ Kenney extended the due dates to December 1 and 8, 1997.

The following parties filed opening comments regarding the CTF/E-Rate issues in the ACR: Pacific Bell; GTE California Incorporated (GTEC); AT&T Communications of California, Inc. (AT&T); MCI Telecommunications Corporation (MCI); Sprint Communications Company L.P. (Sprint), Teleport Communications Group, Inc. (TCG); The Utility Reform Network (TURN); California Dept. of Education (CDE); California Library Services Board (CLSB); California School Boards Association (CSBA); California State Library (CSL); Bay Area Education Network (BAEN); Kern County Superintendent of Schools (Kern County); and 23 other individual schools and or school districts. Reply comments were filed by Pacific Bell, GTEC, AT&T, Sprint, and Time Warner AxS of California L.P. (Time Warner).

Pacific Bell is the only party supportive of the approach adopted in Resolution T-16052, whereby schools and libraries must choose between the E-Rate program or the CTF on a service-by-service basis. Pacific Bell argues that the "pick-and-choose" approach in Resolution T-16052 allows schools and libraries to benefit from both programs and to have the flexibility of obtaining CTF discounts for certain services and E-Rate discounts for other services. Thus, Pacific Bell believes that the CTF and the E-Rate program already complement each other and that no modification to the approach described in Resolution T-16052 should be made. Pacific Bell further argues that it has already designed and installed a fully mechanized system to implement the CTF as it was originally designed and could more readily implement the CTF and E-Rate program as described in Resolution T-16052. Combining the CTF and E-Rate program discounts as proposed in the ACR, however, would present significant technical and administrative problems making it difficult to implement the ACR proposal any sooner than January 1, 1999. If the Commission adopts the ACR proposal, Pacific Bell urges the Commission to direct the Telecommunications Division to conduct implementation workshops in 1998 to discuss and resolve implementation issues and concerns.

GTEC, MCI, TCG, Time Warner, and all the other parties representing schools and library organizations support the ACR proposal. They generally argue that allowing cumulative discounts from both the E-Rate and the CTF would maximize the benefits of both programs. They all agree that the cumulative discounts should not exceed 100 percent.

GTEC believes that the ACR proposal is easier for schools and libraries to understand and less burdensome for carriers to administer. Nevertheless, should the Commission adopt the ACR proposal, GTEC suggests that the Commission allow carriers sufficient lead time to make the necessary modifications to their ordering, provisioning, and billing systems to implement the CTF and E-Rate discounts. GTEC proposes that the Commission first solicit comments from service providers to determine the lead time required and take it into account in setting the implementation timeline for the restructured CTF. GTEC also concurs with Pacific Bell's suggestion to have industry-wide workshops to discuss implementation plans for administering the discounts. MCI points out that, since the CTF and E-Rate program are administered and funded separately, integrating the CTF and E-Rate program to give larger discounts would not seriously drain either fund.

All the carriers supporting the ACR proposal agree that the E-Rate discounts should be applied first, and then the 50 percent CTF discount applied on the remaining rate. The BAEN also supports this approach and further advocates that in addition to the cumulative discounts proposed in the ACR, the Commission redefine the discounted services covered under the CTF to match the federal program.

The other education organizations (e.g., CDE, CSBA, Kern County, the etc.) express concern that Resolution T-16052 unduly restricts local education agencies currently participating in the CTF to apply for the E-Rate program. More specifically, these groups object to the following statement on page 5 of Resolution T-16052: "This means that the federal discounts cannot be applied after the CTF discounts." They interpret this statement to mean that current beneficiaries of the CTF could not apply for the E-Rate discounts. Kern County argues that arbitrarily requiring districts to take the E-Rate discount prior to taking the CTF discounts unfairly discriminates against those already participating in the CTF since they would be required to relinquish their current CTF discounts to apply for the E-Rate program. The groups suggest that the language be revised to allow participation in both programs. Kern County further suggests that districts be allowed the flexibility to determine which program they apply for first. GTEC opposes the latter suggestion arguing that it will pose tremendous administrative difficulties for billing systems management.

TURN, AT&T, and Sprint disagree with the ACR proposal to allow the stacking of E-Rate and CTF discounts. They argue that this approach will result in total discounts exceeding the 50 percent discount contemplated in D.96-10-066. This effectively gives schools and libraries rate reductions which may be more than necessary to promote affordable access to telecommunications technologies and may not be cost effective. TURN further argues that there must be a demonstration, through evidentiary hearings, that such additional rate reductions outweigh the cost to the general body of ratepayers who pay the surcharge to fund the CTF.

In lieu of the cumulative stacking of discounts proposed in the ACR, an alternative approach supported by TURN, AT&T, and Sprint is for the CTF to provide supplemental funding to achieve the 50 percent discount intended in D.96-10-066; basically making the CTF into a gap filler or a fund of last resort. (For brevity, this approach is hereinafter referred to as the "TURN proposal"). Under the TURN proposal, the CTF would only provide discounts as necessary to give a school or library the maximum 50 percent discount allowed under the CTF. Other entities that qualify for larger discounts under the E-Rate program will not qualify for additional CTF discounts. This would leave schools and libraries to be as well off as before the presence of the E-Rate program. The CTF would still be available for those entities that may not qualify for E-Rate program discounts, but are otherwise eligible under the CTF program. The proponents argue that this approach balances the social goals of providing advanced telecommunications services to schools and librarieswith the goal of minimizing the cost to California ratepayers funding the CTF. Sprint further asserts that this approach will stretch the CTF funds and allow the greatest participation by all California schools and libraries not funded by, or receiving lesser discounts from, the E-Rate program.

Pacific Bell opposes the TURN proposal, asserting that none of the three parties supporting it has offered any evidence that the CTF is not adequately funded to operate according to the approach in Resolution T-16052. Pacific Bell believes that implementation of the TURN proposal would impose an administrative burden on carriers which outweighs any limited benefits to be gained. Furthermore, the TURN proposal would affect only a small percentage of schools and libraries - i.e., those in the most affluent areas, which are only eligible for discounts less than 50 percent under the E-Rate program.

DISCUSSION

The Commission established the CTF in D.96-10-066 to implement the mandates of AB 3643, as well as Section 254(h)(1) of the Telecommunications Act of 1996. The Commission believes that providing discounted rates for telecommunications services to schools and libraries would ensure their access to these services and allow them to be positioned as early beneficiaries of advanced telecommunications and information services.[6] The Commission adopted the discounts in D.96-10-066 for schools and libraries, rural health care, and CBOs as a matter of public policy to foster the above objectives.

A. Options for Realigning the CTF and E-Rate Programs

With the FCC's adoption of a schools and libraries discount program that performs a similar function to the CTF, the

[6] D.96-10-066, mimeo., p. 83.

Commission finds it imperative to revisit the CTF in order to ensure that its rules are consistent with and do not burden the federal program. In light of the availability of federal discounts under the E-Rate program, it is appropriate that the Commission realign the discount for schools and libraries under the CTF with those provided under the E-Rate program. There are several approaches to accomplish this realignment. One alternative, as taken in Resolution T-16052, would require schools and libraries to choose either the CTF or E-Rate discount for a given service. Another alternative is the approach proposed in the ACR, which would enable schools and libraries to apply the CTF discount on top of the E-Rate discount for those services currently covered under the CTF. The third option is the TURN proposal to use the CTF as a supplemental fund or a fund of last resort. Taking any of these three options a step further, the Commission could expand the service coverage of the CTF, as BAEN proposes, to include the other services covered under the E-Rate program.

The Commission declines BAEN's proposal to redefine the service coverage of the CTF to match that of the federal program because it would expand the CTF to services and service providers over which the Commission currently has no regulatory authority. Furthermore, the Commission believes that the generous discounts available for these other services under the E-Rate program would provide California schools and libraries affordable access to advanced telecommunications technologies without unnecessarily increasing the CTF funding requirement and the corresponding cost to California ratepayers paying the CTF surcharge. For these reasons, the Commission shall retain the set of services for which CTF discounts apply as adopted in D.96-10-066.

This resolution therefore focuses on how the CTF discount program for schools and libraries could best complement the E-Rate program for those telecommunications services currently covered under the CTF. In determining which approach to take, the Commission must balance the social goals of providing schools and libraries affordable access to advanced telecommunications technology with the cost to California ratepayers of providing such benefit.

Resolution T-16052 adopted an interim approach which would essentially keep the CTF and the E-Rate program discounts mutually exclusive for services discounted by the CTF. Schools and libraries would have to decide which program offers them the best price for the telecommunications services covered by both programs. Given the more expansive service coverage of the E-Rate program, some institutions might choose to use the E-Rate program for those services not covered by the CTF, but use the CTF for certain services for which they might only be eligible to receive less than 50 percent discount under the E-Rate program.

The Commission agrees that requiring schools and libraries to pick-and-choose between the CTF and the E-Rate program on a service-by-service basis unduly restricts the participation of these entities in both programs and consequently limits the benefits that they would otherwise obtain. The Commission is not persuaded by Pacific Bell's arguments for the retention of the interim approach adopted in Resolution T-16052. While Pacific Bell asserts that it could readily implement the CTF as it was originally designed and as described in Resolution T-16052, the other carriers are all supportive of modifying the approach taken in the resolution. GTEC further asserts a contrary view that the ACR approach would be less burdensome for carriers to implement. The Commission therefore finds that Resolution T-16052 should be modified to remove the restriction it imposes and to adopt a policy that would enable California schools and libraries to benefit from both the CTF and E-Rate programs.

The TURN proposal tends to limit the benefit of additional CTF discounts to schools and libraries that are only eligible for less than 50 percent discount under the E-Rate program. This approach would have the effect of confining the CTF to a small percentage of those entities. The CTF in this case would provide supplemental funding to more affluent schools and libraries, but not to rural and/or more economically disadvantaged ones that could potentially obtain larger discounts from the E-Rate program.

The inauguration of the federal program will lead to a reduction in the state funding responsibility under any of the options discussed. By limiting the benefits of the program to only California's wealthiest schools and libraries, the TURN proposal may result in the greatest savings. TURN's speculation that the current funding will prove insufficient to meet the demand for the CTF is without basis. The Commission instituted the CTF as a strategy to comply with AB 3643 to position education, health care, community, and government institutions to be early recipients of the benefits of the information age and to promote deployment of advanced telecommunications technology to all customer segments. Restructuring the CTF to make it essentially a supplemental funding source for more affluent schools and libraries, to the exclusion of others that are probably more in need of additional support, would be inconsistent with this policy. Besides, the Commission believes that implementing the TURN proposal would be more complicated and pose relatively more administrative difficulties to implement and monitor. The Commission and carriers in this case would have to closely track the status of each school's and library's participation in the FCC discount program in order to calculate how much additional CTF discount to provide. Coordination with the administrator of the federal schools and libraries program becomes more crucial and necessary than it otherwise would be.

The Commission finds the ACR proposal to be the most reasonable approach in realigning the CTF with the E-Rate program. It provides the most benefit to California schools and libraries since they would be eligible to participate in and receive discounts from both programs. Under this approach, all eligible entities would realize lower rates for the telecommunications services covered by both programs and be in a better position than before the presence of federal discounts. The Commission does not view this approach to be an imprudent choice that would unnecessarily increase the cost to California ratepayers and not be cost effective, as some parties argue. The availability of federal subsidies from the E-Rate program will, in fact, reduce the draw from the CTF for discounts that carriers provide to schools and libraries. This is because, under the ACR proposal, the 50 percent CTF discount is to be applied on the remaining rate after the E-Rate discount is taken into account.[7] The Commission believes that providing the additional CTF discount to schools and libraries as proposed in the ACR will further accomplish the Commission's objectives when it established the CTF.

The Commission shall adopt the ACR's proposal to apply the E-Rate discount first prior to the CTF discount for a given service. This is consistent with the FCC's 4th Order. The Commission clarifies that this approach does not in any way preclude any school or library which is currently receiving the CTF discount from applying for the federal discount. The school orlibrary may still apply for the E-Rate program, and once it becomes eligible and obtains E-Rate support, then it is a matter for the service provider to adjust the rates charged to this recipient to also take into account the 50 percent additional CTF discount the recipient is entitled to. With E-Rate discounts ranging from 20 percent to 90 percent of the pre-discount price, the additional 50 percent CTF discount would result in effective cumulative discounts ranging from 60 percent to 95 percent for the qualifying services under both programs and under no circumstance shall the total discount exceed 100 percent.

According to the process adopted today, eligible schools and libraries can participate in the federal E-Rate program, the CTF program, or receive cumulative discounts from both programs. If the school or library participates in both programs it will receive cumulative discounts on the services specified in D.96-10-066. Cumulative discounts will be established in the

[7] The CTF has been in operation for a year, and so far, only about a third of the $40 million earmarked for schools and libraries have been committed. The Commission does not foresee a surge of applications from California schools and libraries for CTF discounts that would threaten to drain the fund as a result of the E-Rate program.

following sequence. First, a pre-discount price is determined according to the procedures established by the FCC. Second, a discount on all telecommunications services will be applied according to the FCC's discount matrix. Finally, the 50 percent CTF discount rate will be applied to the post E-Rate discounted price for the services identified in D.96-10-066. Carriers will be reimbursed by CTF for the difference between the post federal discount price and the CTF rate. The following table illustrates the application of the federal and state discounts on a hypothetical service identified by D.96-10-066.

Table: Illustrative Application of Discount

Wealth of School District	Pre-Discount Price	E-Rate Discount	Post E-Rate Price	CTF Discount	Recipient Pays Carrier	E-Rate Program Pays Carrier	CTF Program Pays Carrier
Low	$50	90%	$5	50%	$2.5	$45	$2.5
Moderate	$50	60%	$20	50%	$10	$30	$10
High	$50	20%	$40	50%	$20	$10	$20

B. *Implementation Issues*

There are a number of implementation issues associated with the revision to the CTF program adopted by this resolution. First, several carriers suggest that the Commission allow sufficient lead time for them to undertake all the necessary system changes to be able to provide cumulative CTF/E-Rate discounts. They propose that the Commission solicit further comments and/or order industry-wide workshops to discuss outstanding implementation issues. Pacific Bell recommends that the Commission postpone implementation of the ACR approach until January 1, 1999, in order to allow for workshops to identify and resolve implementation issues and concerns prior to officially combining the two programs.

Second, the CDE and other school organizations suggest that the Commission develop a reporting process to ensure that CTF recipients are not obtaining cumulative discounts over 100 percent. They further urge the Commission to adopt a process which allows CTF recipients to file changes to the Commission instead of new applications as they solicit bids and select vendors following the FCC requirements.

The third issue concerns the CTF reports that carriers must submit in order to receive reimbursement from the CTF. More specifically, in D.96-10-066 the Commission directed staff to conduct a workshop to devise the monthly reports that carriers must file to obtain reimbursement from the CTF.[8] In compliance with the Commission's directive, staff conducted workshops in December 1996 and January 1997; and staff submitted its workshop report to the Commission on June 27, 1997. There was no opposition to the CTF reporting requirements recommended by staff in its workshop report.[9] D.96-10-066 also instructed the assigned Administrative Law Judge (ALJ), upon the receipt of staff's workshop report, to issue an ALJ ruling "prescribing the monthly report that the California Teleconnect fund will require."[10] No such ALJ ruling has been issued to date.[11]

The Commission recognizes that carriers would have to make changes in their ordering, provisioning, and billing systems to implement the CTF modification adopted in this resolution. The Commission also realizes that some revisions may be necessary on the CTF application procedures, carrier reporting requirements, and claim reimbursements from the CTF as a result of the E-Rate program. In particular, the CTF reporting requirements set forth in staff's workshop report of June 27, 1997, may need to be revised to reflect the changes to the CTF program that are adopted by this resolution.

To expedite resolution of these implementation issues, the Commission shall order the Telecommunications Division to conduct a workshop among the carriers, schools/library groups, and other interested parties within 30 days of the effective date of this resolution. The workshop should address the outstanding technical, administrative, and other related implementation issues and concerns. In advance of the workshop, interested parties should identify implementation issues that they wish to be addressed and submit a proposal for resolving the issue in a letter to the Director of the Telecommunications Division within ten days of the effective date of this resolution. The workshop shall also address whether, and to what extent, the CTF reporting requirements contained in staff's workshop report should be revised to reflect changes in the CTF program. The Commission shall issue a resolution or resolutions following the workshop, specifying implementation procedures for the ACR approach adopted in this resolution and adopting final CTF reporting requirements. The Telecommunications Division Director may convene additional

[8] D.96-10-066, mimeo., p. 89.

[9] Copies of staff's workshop report may be obtained by contacting Brain Roberts at 1-415-703-2334 or Angela Young at 1-415-703-2837.

[10] D.96-10-066, O.P. 15.c(1).

[11] Additional CTF reporting requirements may be necessary in light of D.98-01-023 which required the following: (c) carriers are to collect and remit interest on their accumulating CTF surcharge monies; (b) carriers are to pay an annual rate of interest equal to 10% on surcharge monies not remitted to the CTF on a timely basis; and (c) the CTF is to pay interest on past due amounts owed to carriers for services rendered.

workshops and prepare resolutions for Commission consideration, as necessary, to address any other issues pertaining to the CTF's operation that may arise in the future.

The interest of California schools and libraries will be best served if all carriers offering CTF discounts are able to provide the cumulative discounts as soon as possible. It would be most efficient if issues pertaining to the CTF application and claims processes are resolved prior to the implementation of the CTF modification adopted in this resolution. The Commission expects that after the workshops, appropriate procedures will be established and an implementation timeline adopted in subsequent Commission resolution so that carriers could commence offering the cumulative discounts on a consistent basis. Carriers are expected to begin the process of developing mechanized systems for handling the combined programs, upon issuance of this resolution. The carriers will also have the benefit of the workshop discussions to further guide them in undertaking whatever system changes are required.

C. Compliance with P.U. Code § 1708

In the ACR, any party requesting a hearing was instructed to provide the following information: (1) state why hearing is legally required, (2) identify material contested issues of fact, (3) identify evidence to be offered, and (4) propose a hearing schedule.[12] TURN is the only party requesting a hearing. In a footnote on page 3 of its comments, TURN states that "[i]f the full Commission wishes to pursue the ACR, then TURN requests an evidentiary hearing before such a proposal is adopted." TURN suggests two factual issues it believes should be addressed in hearings:

> proponents of the modification would have to make factual showings such as: (1) without stacking the CTF discount on top of the E-rate discount, it would be impossible to obtain essential telecommunications services, and (2) the increased cost to ratepayers would be a cost-effective expenditure of public money.[13]

TURN, however, did not state what evidence it planned to introduce at a hearing, nor provide a proposed schedule for an evidentiary hearing as required by the ACR.

After careful review of TURN's request for an evidentiary hearing, the Commission concludes that TURN has identified no material issues of fact that would warrant a hearing. More specifically, the two issues of fact identified by TURN were not material issues when we originally established the funding level for schools and libraries under the CTF program. TURN also

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[12] ACR, p. 5 and O.P. 5.
[13] TURN comments, p. 3.

suggests that the factual issues it has identified are not exhaustive of the matters a supporter of the ACR would have to demonstrate.

As indicated previously, D.96-10-066 was intended to comply with the mandates of AB 3643. In particular, D.96-10-066 found that the CTF was justified for several reasons.[14] AB 3643 mandates that schools and libraries are to be positioned to be early recipients of the benefits of the information age, and that incentives should be provided to promote the deployment of advanced telecommunications services to all customer segments. The CTF is necessary and appropriate to ensure that schools and libraries can afford access to these services. The CTF also reduces the dichotomy between the information rich and the information poor. Providing discounted rates to schools and libraries would serve to promote the development of a more advanced telecommunications infrastructure that will bring benefits to all Californians. The revised CTF adopted today serves to better accomplish all the goals the Commission established in D.96-10-066.

TURN's new standards establish criteria that have no basis in the universal service decision and are impossible to meet. TURN suggests that an advocate of the ACR must demonstrate that it would be "impossible to obtain" "essential" services without the cumulative discounts. Clearly, a discount program can only serve to make services which are possible to obtain more affordable. Contrary to TURN's characterization, the purpose of the CTF was not to improve access to the "essential" services only, but also to advanced telecommunications services.

Furthermore, TURN assumes that the cumulative discount approach would result in increased cost to ratepayers. As indicated earlier, the availability of federal E-Rate subsidies will necessarily reduce the CTF support for a given recipient since the 50 percent CTF discount will now be calculated based on lower post E-Rate discounted rates. There is no clear indication that the action taken by this resolution will result in a serious drain on the CTF as to require increased surcharges on California ratepayers. On the contrary, the revised approach adopted today will reduce the CTF funding requirement and the costs to ratepayers.

In sum, TURN has identified no material issues of fact that warrant an evidentiary hearing. The Commission has provided sufficient notice and given parties the opportunity to be heard through the ACR comment process. The Commission therefore modifies, by virtue of this resolution, its previous orders regarding the operation of the CTF as set forth in Resolution T-16052 and D.96-10-066.

[14] D.96-10-066, mimeo., pp. 72, 83, 90-92.

FINDINGS

1. In D.96-10-066, the Commission established the California Teleconnect Fund (CTF) which provides California schools and libraries with a 50 percent discount on the following services: measured business service, switched 56, Integrated Services Digital Network (ISDN), T-1, and DS-3, or their functional equivalents.
2. The Federal Communications Commission (FCC) established a new discount program for schools and libraries on May 7, 1997, in FCC Order No. 97-157.
3. This resolution is in compliance with Ordering Paragraph (O.P.)17 of Decision (D.)96-10-066 which directed the Telecommunications Division staff to recommend to the Commission what issues with respect to reconciling the FCC's and the CPUC's universal service rules.
4. Discounts provided under the FCC program (also referred to as E-Rate program) apply to all commercially available telecommunications services and range from 20 to 90 percent according to the discount matrix.
5. In order for California schools and libraries to participate in the federal schools and libraries discount program, the Commission adopted Resolution T-16052, which approved the discount matrix in FCC Order No. 97-157, CC Docket 96-45, for intrastate telecommunications services.
6. Resolution T-16052 encouraged schools and libraries to determine which program offers them the best solution to their telecommunications needs at the best price, and to choose between the federal E-Rate program or the state CTF program on a service-by-service basis.
7. Under the pick-and-choose approach adopted by Resolution T-16052, a discount obtained for a service from one program, precludes a discount for that service from the other program.
8. In Resolution T-16052, the Commission indicated that it will address the role of the California Teleconnect Fund in the wake of the new federal schools and libraries discount program as part of the Universal Service proceeding.
9. On November 7, 1997, the Assigned Commissioner in the Universal Service proceeding issued a ruling soliciting comments on a proposed realignment of the CTF and E-Rate program
10. The Assigned Commissioner Ruling (ACR) proposed to allow schools and libraries to seek cumulative discounts for a given service from both programs for those services currently covered under the CTF.
11. Several carriers, schoolsand library organizations, and The Utility Reform Network submitted comments on the ACR's CTF/E-Rate realignment proposal.
12. Pacific Bell is the only party supportive of the pick-and-choose approach adopted in Resolution T-16052.

13. GTE California Incorporated, MCI Telecommunications Corporation, Teleport Communications Group, Inc., Time Warner AxS of California L.P., and all parties representing schools and library organizations support the ACR proposal to allow cumulative E-Rate/CTF discounts.
14. TURN, AT&T Communications of California, Inc., and Sprint Communications Company L.P. disagree with the ACR proposal, supporting instead an alternative approach which would make the CTF provide only supplemental funding to schools and libraries up to the 50 percent discount established in D.96-10-066 (referred to here as the "TURN proposal").
15. The Bay Area Education Network proposes that the Commission expand the service coverage of the CTF to match that of the E-Rate program.
16. Redefining the service coverage of the CTF to match that of the E-Rate program would expand the CTF to services and service providers over which the Commission currently has no regulatory authority.
17. The pick-and-choose approach in Resolution T-16052 restricts the participation of California schools and libraries in both the CTF and the E-Rate program, and precludes them from benefiting more from the presence of the federal discounts.
18. The TURN proposal will restrict the benefits of additional CTF discounts to schools and libraries that are only eligible to receive less than 50 percent discount from the E-Rate program.
19. The ACR proposal will allow all eligible California schools and libraries to obtain additional CTF discounts for telecommunications services after taking into account the E-Rate discounts.
20. The ACR proposal to apply the E-Rate discount first prior to the CTF discount for a given service is consistent with the FCC's Fourth Order on Reconsideration, issued on December 30, 1997.
21. There are a number of implementation issues associated with the revision to the CTF program adopted by this resolution that are more expeditiously resolved through the workshop process and Commission resolution.
22. TURN is the only party requesting a hearing. TURN, however, failed to identify material issues of fact that warrant evidentiary hearings, state what evidence it planned to introduce at a hearing, nor provide a proposed schedule for an evidentiary hearing as required by the ACR.

THEREFORE, IT IS ORDERED that:

1. Eligible schools and libraries may receive 50 percent discount for telecommunications services covered under the California Teleconnect Fund on the remaining rates after taking into account the discounts received from the federal E-Rate program.
2. The Telecommunications Division shall conduct a workshop within 30 days of the effective date of this resolution to address outstanding technical, administrative, and other related implementation issues. The workshop shall also address whether, and to what extent, the California Teleconnect Fund reporting requirements contained in staff's workshop report should be revised to reflect changes in the program.
3. Any interested party that wishes the workshop and subsequent resolution to address a specific implementation issue should (1) identify this issue and (2) propose a means of resolving the issue in a letter to the Director of the Telecommunications Division within ten days of the effective date of this resolution. Such a letter must also be sent to the service list of the universal service proceeding, Order Instituting Rulemaking (R.)95-01-020/Investigation (I.)95-01-021 and to the parties that submitted comments on the ACR.
4. Any carrier submitting a list of issues to the Director of the Telecommunications Division, as described in ordering paragraph three, must include as part of that letter a proposed timeline for implementing the cumulative discount approach adopted in this resolution.
5. The Telecommunications Division shall prepare a resolution or resolutions for the Commission's consideration following the workshop, specifying implementation procedures for the approach adopted in this resolution and adopting final reporting requirements.
6. The Telecommunications Division Director may convene additional workshops and prepare resolutions for Commission consideration, as necessary, to address any other issues pertaining to the California Teleconnect Fund's operation that may arise in the future.
7. The Director of the Telecommunications Division shall send copies of this resolution and the list of the commenters on the ACR to all Telecommunications Carriers, the service list of Order Instituting Rulemaking (R.)95-01-020/Investigation (I.)95-01-021, and parties that submitted comments on the ACR.